

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department of Telecommunications
and Energy on its own motion pursuant to
G.L.c. 159, §§ 12 and 16, into Verizon New England
d/b/a Verizon Massachusetts' provision of Special
Access Services

)
)
)
)
)
)
)

D.T.E. 01-34

**REPLY BRIEF OF
XO MASSACHUSETTS, INC.**

I. INTRODUCTION

In its Initial Brief, XO Massachusetts, Inc. ("XO") showed how the performance of Verizon Massachusetts, Inc. was deficient with respect to Special Access Services provisioning and maintenance. Further, that brief showed how Verizon's performance was better for retail, end-use customers than it was for wholesale, carrier customers.¹ These facts are important because of Verizon's demonstrated dominance of the Special Access Services market.² Additionally, XO showed that a serious problem with the availability of UNE loop and transport exacerbated the clear problems with Special Access Services provisioning because more of the carrier demand is forced on to Special Access Services.³ Verizon's arguments on these points in its Initial Brief are not convincing and require no further rebuttal, so in these regards XO stands on its Initial Brief. This Reply Brief addresses the limited area of what remedies are necessary and appropriate.

¹ See XO Initial Brief, Section V.

² See XO Initial Brief, Section IV.

³ See XO Initial Brief, pages 2-4, 11-12.

II. NEED FOR REMEDIES

In its Initial Brief, Verizon essentially argues for the *status quo*. That is to be expected: to the extent that Verizon does not have to make efforts that will help foster a more competitive market, it is certainly in Verizon's interest to advocate in that direction. Verizon goes so far as to say special access customers are highly sophisticated and make their quality expectations known to Verizon. Verizon Initial Brief, p. 17. However, with (or perhaps due to) Verizon's dominance in the special access market, XO's constant demands for improved service fall on deaf ears. If such customer-supplier interaction worked to improve special access services, the Department's involvement in this critical issue would not be necessary. Unfortunately, Verizon's claims that it works with its carrier customers is just not true and its approach is inconsistent with the Telecommunications Act of 1996 and extensive state and Federal rulings and requirements seeking to ensure a competitive telecommunications market. In opening this proceeding and requiring Verizon to provide the intrastate and interstate data, the Department obviously recognized the problems caused by Verizon's performance on Special Access Services for competitive carriers and their customers. The Department should follow up on that recognition and take steps that will help solve the problem.

Most of Verizon's arguments simply seek to make light of the problem and as such are directly in conflict with the rulings that the Department has already made. Verizon's assertions that the data is apples and oranges or that the data does not adequately consider the failures or misses that are not Verizon's fault certainly cannot eradicate the significant examples of better performance to retail end-users as opposed to wholesale carrier customers.⁴ Further, if Verizon is right and there really is no problem to address (due to improved performance or otherwise),

the data provided by the reports the CLEC parties to this proceeding have requested will provide proof positive and then the Department can relax any requirements that have been imposed.

As described below, Verizon's arguments that reporting and other potential remedies may be unduly burdensome are exaggerated. Further, if necessary, that concern can be addressed by reducing some of the reporting so that critical data is obtained, but the reporting burdens are reduced. Compared to the cost of an inadequately competitive market, it is desirable to achieve the benefit of having the data available to interested parties to help determine where Verizon's performance falls short and hurts the competitive market.

III. DISCUSSION OF REMEDIES

As noted above, in its Initial Brief XO made several recommendations to address the problems discussed in Section I above. First, with respect to the issue of Verizon actions that force CLECs away from taking loop and transport UNEs to taking more special access services than they would otherwise (i.e. the no facilities policy with respect to loop and transport UNEs), XO recommended that the Department require Verizon to streamline its ASR process so that CLEC orders for loop and transport UNEs are converted to special access services orders upon Verizon's (reasonable) determination of no facilities. XO also urged the Department to open a Phase II of this proceeding (or at least to establish a task force) to review Verizon's no facilities policy.⁵

⁴ See, e.g., Exh. AT&T-2, page 18; see also XO Initial Brief, Section V.

⁵ Verizon claims that during the 2000-2001 time frame, there was an unprecedented, increased demand for special access services in Massachusetts with monthly order volumes increasing 75% in 2001 compared to 2002. Verizon Initial Brief, footnote 45. The Bell Atlantic-GTE merger was completed on June 30, 2000. See News Release dated June 30, 2000. It is no coincidence that the number of special access orders dramatically increased at the same time the Bell Atlantic-GTE merger was completed. Further, Verizon's position of refusing UNE construction led to more special access requests in this time frame.

Second, with respect to Verizon's performance on special access service provisioning, XO urged that reporting requirements be established to monitor ongoing performance and that where appropriate, the Department could coordinate with the FCC to ensure that Verizon took steps to improve that performance. Regarding reporting requirements, XO supports the WorldCom recommendation that Verizon should report on its Special Access Service performance in accordance with the Joint Competitive Industry Group ("JCIG") metrics submitted to the FCC for both intrastate and interstate circuits. In fact, XO was a signatory to the JCIG.

The Department correctly determined that it was necessary and not in contravention of FCC jurisdiction for the Department to require Verizon to produce performance data on both intrastate and interstate special access services to see if problems existed. Department Order dated August 9, 2001; Order on Verizon's Motion for Partial Reconsideration and/or Clarification, dated October 25, 2001. With the evidence now showing existence of a problem, the Department can now just as properly require provision of the same or similar data to monitor Verizon's improvement (we hope) in such performance. To the extent the Department deems it proper, it is entirely within its jurisdiction to require changes in Verizon's intrastate special access service provisioning process and performance, or even to require that Verizon give customers credits for inadequate intrastate performance. Any effect such requirements may have on interstate process would be purely incidental and in no way would undercut the authority of the Department to require such actions. Further, as discussed elsewhere in this brief, the Department certainly can and should seek from the FCC a

delegation of authority to take actions to ensure reasonable performance in provisioning all special access circuits in Massachusetts.

Requiring reporting on the JCIG metrics would be an important step in ensuring that Verizon's performance relative to special access services be both reasonable and non-discriminatory. It is that level of performance that M.G.L. C. 159 § 16 requires. The metrics called for by the JCIG proposal are reasonably designed to cover several different aspects of special access service provisioning. It is clear that most, if not all, of such metrics, measure performance at different steps of the process. See Exh. WCOM-1, Att. D. To the extent that different metrics address the same step of the process, they can still be seen as different pieces of information. For example, Verizon complains that On Time Performance and Days Late are duplicative. While those two metrics measure the timeliness of installation, it is important to know the two different pieces of information that those metrics yield. Specifically, knowing both how often Verizon is late (i.e. breadth of poor performance) and when it is late how long it takes to install, may help pinpoint problems in Verizon's Special Access Services provisioning process. That in turn may help solve the problem.

Therefore, all the JCIG metrics should be adopted. To the extent the Department requires credits to carriers for Verizon service shown to be inferior by such metrics, as suggested by AT&T (or if it imposes some other system involving financial impacts), the Department can avoid the doubling up of penalties that Verizon seems to fear. Specifically, if there are different metrics that cover the same step of the special access service provisioning process and Verizon performance on that step is so poor that Verizon would have to allow bill

credits, the Department can simply require credits by the specific step, rather than by the metric.

Verizon's other complaint about the JCIG is that Verizon would have to make 7800 monthly calculations is significantly exaggerated. That number can very quickly be reduced. First, Verizon asserts that a requirement of making calculations by carrier mean that at least 30 sets of calculations would have to be made for what Verizon contends is a conservative estimate of 30 carriers. XO seriously questions that estimate -- certainly the major long distance providers and CLECs number much fewer. In any event, the Department could determine Verizon's performance on a reasonable basis if it just looked Verizon's performance on service to the largest carriers. That would still likely cover the vast majority of the Special Access services provided. For example, were Verizon required to report on performance for 5 instead of 30 carriers, then there would be 1300 instead of 7800 calculations. Also, Verizon asserts the JCIG metrics require tracking at 6 levels of service. However, XO is not clear on that calculation because the metrics themselves only specify 4 levels of service: DS -0, DS-1, DS-3 and OCn. If only 4 levels of service require reporting, then the number of calculations is reduced to 900. XO urges that the benefit of determining problems and, XO hopes, leading to a solution to the problem and yielding improvements in the level of competition is well worth any burden of making those calculations. To the extent that the data shows that no problems exist for a certain specified time (say, twelve months) period the reporting requirement could be eased. Alternatively, if the Department were to find that even 900 measurements for potentially a short period was overly burdensome, it is certainly free to choose some subset of the JCIG metrics to require Verizon to address in regular reports. That would reduce the calculations even further.

Verizon's other arguments against reporting are no more convincing. The argument that the market is sufficiently competitive that no need exists was thoroughly addressed in XO's Initial Brief, as well as those of WorldCom and AT&T. No more needs be said. On the argument that such reporting is unduly burdensome, the discussion above shows that Verizon overstates the burdens and that whatever burdens there may be can be reasonably mitigated in scope or time (assuming that Verizon improves its performance). Verizon's concern that the data does not adequately consider potential causes of inferior performance that are beyond Verizon's control can be simply addressed. As discussed below, some third party (e.g. the Department or an auditor) ultimately will have to review the data that Verizon reports. To the extent that Verizon is concerned about a particular set of data implying erroneous conclusions, Verizon certainly can point that out to the reviewer of the reports and the Department can act or refrain from acting as it deems appropriate. Finally, Verizon's argument that reporting requirements will impede competition and hurt consumers is really over the top! Verizon has gone from circumstances of clear problems in the competitive market (due to its own inferior service) to alleging that the solution to those problems (that the Department has recognized and that the data supports) will be worse than the initial problems. It is simply absurd to suggest that limited reporting requirements will so burden Verizon that its ability to devote resources to competition is reduced. Similarly, that other providers of special access services are not required to make comparable reports is no indication of unfairness and will not harm the competitive market. First, unlike the situation relative to Verizon, there has been no critical mass of complaints about the performance of other providers of special access services. Further, those providers simply have such a small part of the market that no such critical concerns exist.

Either as a first step while Verizon develops the ability to provide the data called for by the JCIG metrics (as suggested by WorldCom), or as a potentially less burdensome level of reporting if the Department deems the JCIG metrics too burdensome, the Department should at the least require Verizon to provide the data now required by the New York State Public Service Commission. See AT&T Initial Brief, pages 30-31. Such reporting should not be burdensome as Verizon is already doing it in New York, and volunteered to do such reporting in New Hampshire and Maine.

Verizon does suggest two metrics that it would voluntarily provide in regular reports. Though it seeks to disclaim any need for any reporting, Verizon thus does acknowledge that some reasonable minds could reasonably find that reporting on special access service performance was needed. The two metrics on which Verizon agrees it would provide data, on-time provisioning and mean time to repair, are certainly important, but are by no means sufficient to address the demonstrated problems in a meaningful manner. For Verizon to be "on time" does not necessarily solve the problems of carriers receiving inadequate special access services performance. For example, Verizon can provision circuits by the time it offered to provision those circuits, yet a carrier can still lose a customer because that time might be longer than the customer could obtain if it dealt directly with Verizon. Also, delays by Verizon in the pre-ordering or even the ordering steps could yield a time frame for provisioning that was not reasonable and led to market failures. On the maintenance side, it is also important to see if there is a problem with circuits that Verizon provisions to carriers, not just whether Verizon fixes the circuits quickly enough once there is a problem. Therefore, it is necessary to track failure rate and repeat trouble.

Additionally, once the data is reported (in whatever form the Department deems appropriate), someone other than Verizon or the carriers must review the data and draw the proper conclusions as to the quality of Verizon's performance. It is then in the Department's realm (perhaps with appropriate contact and request for delegated authority from the FCC) to determine what responsive action is then needed. For the review and analysis of the data, if the Department has the resources to conduct such review and analysis, XO has no problem with that approach. Otherwise, it would be necessary for an auditor to be hired -- at least until the data showed that Verizon's performance was adequate on an ongoing basis. Because it is Verizon's obligation to perform adequately and because the CLECs have borne the cost of Verizon's inadequate performance to date, it is only reasonable that the audits be performed at Verizon's expense. To the extent that particular carriers request more frequent or specialized audit analyses, it would be appropriate that such carriers bear that specific cost.

Finally, regarding additional remedies, to the extent that the analyzed data shows particular flaws or biases in Verizon's processes, the Department should require that those be remedied. That is certainly an action within its general supervisory powers with respect to intrastate services. To the extent that Verizon's performance remains inadequate, some sort of financial penalty may be proper and necessary, but XO suggests that issue be taken up at a later time after the ongoing performance is monitored for some reasonable, but not overly long, time period.

CONCLUSION

For the reasons set forth in XO's Initial and Reply Briefs and on the record in this proceeding, the Department should adopt the suggested remedies to seek to resolve the obvious problem of inadequate wholesale provisioning of special access services and improper forcing of CLECs to take Special Access Services in place of loop and transport UNEs.

Respectfully submitted,

XO MASSACHUSETTS, INC.

By Its Counsel

Eric J. Krathwohl, Esq.
Rich May, a Professional Corporation
176 Federal Street, 6th Floor
Boston, MA 02110-2223
Tel: (617) 556-3857
Fax: (617) 556-3890

Karen Nations, Esq.
XO New York, Inc.
45 Eisenhower Drive, 5th Floor
Paramus, NJ 07652
(201) 226-3675 (telephone)
(201) 226-0249 (fax)

Date: July 8, 2002

K:\UTL\OTH\XO\5401-34repbrf.v2.doc